

1 HONORABLE MICHELLE L. PETERSON
2
3
4
5
6
7
8
9

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

10 NEXON KOREA CORPORATION, a Korean
11 Corporation,

12 Plaintiff,

v.

13 IRONMACE CO., LTD., a Korean
14 Corporation; JU-HYUN CHOI, individually;
and TERENCE SEUNGHA PARK,
individually,

15 Defendants.

16 Case No.: 2:23-cv-00576-MLP

17 DECLARATION OF JAMES S.
BLACKBURN IN SUPPORT OF
PLAINTIFF'S *EX PARTE* MOTION
FOR ALTERNATIVE SERVICE OF
PROCESS PURSUANT TO FEDERAL
RULE OF CIVIL PROCEDURE 4(F)(3)

18 I, James S. Blackburn, am over the age of 18, have personal knowledge of all the facts
stated herein and declare as follows:

19 1. I am a partner at the law firm Arnold and Porter Kaye Scholer LLP ("Arnold & Porter"),
which represents Plaintiff NEXON Korea Corporation ("Plaintiff" or "Nexon") in the above-
captioned litigation. The statements made below are true to the best of my knowledge and belief.
I submit this declaration in support of Nexon's Motion for Alternative Service of Process (the
20 "Motion for Alternative Service") on Defendants IRONMACE Co., LTD. ("Ironmace"), Ju-Hyun
Choi ("Choi"), and Terence Seungha Park ("Park") (collectively the "Defendants").

1 2. Ironmace's business address at 401, 16, Pangyo-yeok-ro, 192beon-gil, Bundang-gu,
 2 Seongnam-si, Gyeonggi-do, Republic of Korea 13524, is listed on its official website.¹ According
 3 to Nexon's HR records, Park's home address is 1004, 29, Seocho-daero 74-gil, Seocho-gu, Seoul,
 4 Republic of Korea 06621. According to Nexon's HR records, Choi's home address is 302-1402
 5 Mokryeon Maeul Hanil Apt., 645, Pangyo-ro, Bundang-gu, Seongnam-si, Gyeonggi-do, Republic
 6 of Korea 13512.

7 3. On March 22, 2023, I sent a takedown request on behalf of Nexon pursuant to the Digital
 8 Millennium Copyright Act (the "DMCA") to request that Valve Corporation ("Valve") remove
 9 Ironmace's video game "Dark and Darker" from the Steam platform ("Steam") ("DMCA
 10 Takedown Notice"). Valve removed Dark and Darker from Steam on March 25, 2023. A true and
 11 correct copy of the DMCA Takedown Notice is attached hereto as Exhibit A.

12 4. On March 23, 2023, I sent a cease and desist letter to Ironmace, addressed to Park who is
 13 the CEO of Ironmace ("Ironmace Cease and Desist Letter") via email at contact@ironmace.com.²
 14 I did not receive any bounce-back notice. Arnold and Porter Kaye Scholer LLP Foreign Legal
 15 Consultant Office located in Seoul, South Korea ("A&P's Seoul Office") sent a hard copy of the
 16 letter by certified mail to Ironmace's business address at 401, 16, Pangyo-yeok-ro, 192beon-gil,
 17 Bundang-gu, Seongnam-si, Gyeonggi-do, Republic of Korea 13524. A true and correct copy of
 18 the Ironmace Cease and Desist Letter is attached hereto as Exhibit B.

19 5. On the same day, I sent a cease and desist letter to Choi ("Choi Cease and Desist Letter")
 20 via email to Choi's business email address at sdf@ironmace.com. I did not receive any bounce-
 21 back notice. A&P's Seoul Office sent a hard copy of the letter by certified mail to his home address
 22 at 302-1402 Mokryeon Maeul Hanil Apt., 645, Pangyo-ro, Bundang-gu, Seongnam-si, Gyeonggi-
 do, Republic of Korea 13512. A true and correct copy of the Choi Cease and Desist Letter is

¹ Ironmace's official website lists Ironmace's business address, available at
<https://www.ironmace.com/> [https://perma.cc/5V9D-TUQ6].

² Ironmace's official website links to Ironmace's email address, available at
<https://www.ironmace.com/> [https://perma.cc/5V9D-TUQ6].

1 attached hereto as Exhibit C.

2 6. In response to the Ironmace Cease and Desist Letter, on April 12, 2023 I received an email
 3 from LIN (at dhshin@law-lin.com), a Korean law firm that represents Ironmace (“Ironmace
 4 Demand Letter”). A true and correct copy of the Ironmace Demand Letter is attached hereto as
 Exhibit D.

5 7. On April 14, 2023, Nexon filed a complaint against Defendants alleging claims for
 6 misappropriation of trade secrets under the Defend Trade Secrets Act, and copyright infringement
 7 under the Copyright Act. *See* Dkt. No. 1.

8 8. On April 17, 2023, I sent a letter to LIN via email (to dhshin@law-lin.com) to give notice
 9 of Nexon’s lawsuit against Defendants (“Notice of Lawsuit to LIN”). I enclosed an as-filed copy
 10 of the complaint, and asked whether LIN would accept service on behalf of Ironmace and its
 11 principals Choi and Park. A true and correct copy of my email and Notice of Lawsuit to LIN is
 12 attached hereto as composite Exhibit E. I did not receive a response from LIN to my letter.

13 9. On April 20, 2023, I received an email from Aaron J. Moss (AMoss@ggfirm.com) at
 14 Greenberg Glusker, a U.S. law firm that represents Ironmace, with a copy of the DMCA counter
 15 notification Ironmace sent to Valve (“DMCA Counter Notification”). The DMCA Counter
 16 Notification states Ironmace “consented to the jurisdiction of the Western District of Washington”
 17 and agreed to “accept service of process from the person who submitted the takedown notification
 18 under 17 U.S.C. § 512(C)(1) or their agent.” A true and correct copy of the DMCA Counter
 19 Notification is attached hereto as Exhibit F.³

20 10. From April 14 to April 19, 2023, Defendants conducted its fifth playtest of Dark and
 21 Darker by posting a BitTorrent link to the game on the “Dark and Darker” server on Discord⁴ and

22 ³ According to YouTuber Onepeg, Moss also sent the DMCA Counter Notification directly to
 Onepeg and other media outlets. <https://www.youtube.com/watch?v=EuQ4x84ITDw>
 [https://perma.cc/XJL6-STT5] Onepeg had previously produced a 34 minute video detailing
 the allegations of the Complaint. https://www.youtube.com/watch?v=Jo_IZzknMjU
 [https://perma.cc/2EGT-LA5M].

4 Discord is a social media platform that promotes itself as having over 150 million monthly
 active users communicate with voice calls, video calls, text messaging, etc., in private chats or

1 on Ironmace's official Twitter.

2 11. Between April 14 to April 19, 2023, Arnold & Porter, under Nexon's instruction,
 3 submitted DMCA takedown requests to various service providers to remove infringing posts that
 4 contain links to Dark and Darker. The DMCA takedown requests to Discord were submitted on
 5 April 14, 2023, April 17, 2023, and April 18, 2023; and to Twitter on April 14, 2023. Even though
 6 Discord and Twitter removed the infringing content, Defendants re-posted the infringing content
 7 on Discord and Twitter as new posts along with instructions to access Dark and Darker.

8 12. Choi's email address (sdf@ironmace.com) and Park's business email addresses
 9 (terence@ironmace.com) have been obtained from their respective business cards. According to
 10 Nexon, Choi used his business email address to send an email to Nexon's CEO on April 26-27,
 11 2023.

12 13. Arnold & Porter confirmed that Ironmace, Choi, and Park each maintain active social
 13 media accounts. Ironmace's official website links to: (i) Steam⁵; (ii) Ironmace's Twitter page with
 14 over 62.7K followers (Twitter handle "@IronmaceGames")⁶; and (iii) Dark and Darker's
 15 YouTube.⁷ Choi and Park also possess individual Twitter accounts (Choi's twitter handle "@sdf_"
 16 and Park's Twitter handle "@krapst78"). In addition, Defendants maintain an active presence on
 17 Discord on the "Dark and Darker" server followed by over 441K Discord members. The "Dark
 18 and Darker" server is managed by Ironmace's administrator (user ID "Graysun"), along with Choi
 19 (user ID "sdf") and Park (user IDs "krapst78" and "Terence").

20 14. Nexon believes that Choi is associated with "sdf" social media accounts because "sdf" is
 21 the same ID that is used in Choi's business email address (sdf@ironmace.com) that is listed on his
 22

as part of communities called "servers." See <https://discord.com/company> [https://perma.cc/KK37-CQ68].

⁵ Available at <https://store.steampowered.com/> [https://perma.cc/J64T-R5Q2].

⁶ Available at <https://twitter.com/IronmaceGames> [https://perma.cc/L6K3-7RZ3].

⁷ Available at <https://www.youtube.com/channel/UCRhJyNKxqIwZnz0LIKLijXA> [https://perma.cc/3Y6L-H9VV].

1 business card. Moreover, according to Nexon, while Choi was employed at Nexon, Choi used
 2 “sdf” as an alias for himself. Furthermore, Choi’s Twitter page (@sdf_), states under his handle:
 3 “IRONMACE, Game Developer,” which accurately describes Choi’s role.⁸ Arnold & Porter is
 4 informed and believes that on Discord, Choi uses the same user ID “sdf” to post announcements
 5 and answer questions about Dark and Darker. For instance, on March 5, 2023, there was a Dark
 6 and Darker Q&A with “sdf” on Discord (under discussion #dev-qna!), where “sdf,” as Ironmace’s
 7 game developer, answered questions from the server users about Dark and Darker.⁹

8 15. Nexon believes that Park is associated with “krapst78” accounts because, on Park’s Twitter
 9 page (@krapst78), above his Twitter handle it says “Terence Park.”¹⁰ Moreover, “krapst” is
 10 equivalent to “T. S. Park” backwards, and Park’s full name is “Terrence Seungha Park.”
 11 Moreover, according to Nexon’s HR records, Park was born in 1978. On Discord, Park maintains
 12 two accounts: one account uses the same user ID as Twitter “krapst78”; the other account is his
 13 first name “Terence.” He uses both user IDs on Discord to post announcements about Dark and
 14 Darker and official statements on behalf of Ironmace.

15 16. Defendants have been using these social media platforms to communicate with their
 16 followers by posting announcements about Dark and Darker as well as responding to Nexon’s
 17 allegations in the DMCA Takedown Notice.

18 17. Defendants’ announcements and updates about Dark and Darker include the projected
 19 timeline for Early Access launch and game release date. For example, on October 31, 2022,
 20 Defendants posted on Discord (by Park as “Terence”) about plans “to go early access in April
 21 2023.”¹¹ On August 15, 2022, Defendants posted on Discord (by Choi as “sdf”) the link to Dark
 22

20 ⁸ Available at https://twitter.com/sdf_ [<https://perma.cc/2UDM-ZB57>].

21 ⁹ Available at <https://discord.com/channels/988365908009447485/1081941105672724500>. An
 22 excerpt of Q&A is attached hereto as Exhibit I.

¹⁰ Available at <https://twitter.com/krapst78> [<https://perma.cc/AGP3-GYFU>].

¹¹ Available at
<https://discord.com/channels/988365908009447485/989065417161048084/1036541916852015114>. A screenshot of the post is attached hereto as Exhibit J-1.

1 and Darker's page on Steam, that states "Release Date: Q4 2023."¹² Additionally, on April 4,
 2 2023, Defendants posted on Discord (by Ironmace's administrator "Graysun") that "[t]he current
 3 goal is for Dark and Darker to be released in the fourth quarter of 2023."¹³

4 18. On March 25, 2023 Defendants, posted on Discord (by Park as "krapst78") in response to
 5 the Ironmace Cease and Desist Letter and the DMCA Takedown Notice: "To all our fans, we have
 6 recently been served a cease and desist letter and DMCA takedown by NEXON regarding Dark and
 7 Darker based on distorted claims. We are currently working with our legal team to remedy this
 issue in the best manner possible."¹⁴

8 19. On March 27, 2023, Defendants posted its official statement on Discord (by Park as
 9 "Terence"), which is "intended to address the serious allegations of Copyright Infringement and
 10 Misappropriation of Trade Secrets that have been levied against us in the recent DMCA
 11 'Takedown Notice' from NEXON."¹⁵ The statement includes Google document links to the DMCA
 12 Takedown Notice and Defendants' response to Exhibit D of the DMCA Takedown Notice.

13 20. On March 29, 2023, Defendants posted another statement on Discord (by Park as
 14 "Terence") with Google document links to Defendants' Korean response to the takedown claim,
 concept artist's response to the copyright infringement claims, list of assets purchased to create

17 ¹² Available at
 18 <https://discord.com/channels/988365908009447485/988662112454836234/1008626661366956093>. A screenshot of the post is attached hereto as Exhibit J-2.

19 ¹³ Available at
 20 <https://discord.com/channels/988365908009447485/1025205250124157039/1092753550561513482>. A screenshot of the post is attached hereto as Exhibit J-3.

21 ¹⁴ Available at
 22 <https://discord.com/channels/988365908009447485/988662112454836234/1088990683773272065>. A screenshot of the post is attached hereto as Exhibit K-1.

15 Available at
<https://discord.com/channels/988365908009447485/988662112454836234/1089589927240552448>. A copy of the post is attached hereto as Exhibit K-2.

¹⁶ Dark and Darker, and Defendants' git logs from the first year of development.

21. A true and correct copy of the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil and Commercial Matters (“Hague Convention”) and a list of the signatory members are attached hereto as composite Exhibit G

22. On April 24, 2023, an employee of A&P's Seoul Office called the Korean Central Authority that handles Hague service requests to inquire about the current timeline for Hague service of process in the Republic of Korea, and was told it currently takes four to six months at the earliest.

23. Arnold & Porter also received an estimate by email from Viking Advocates, LCC, a firm that handles service of process in the Republic of Korea, which “project[ed] 4-5 months from a request’s submission until receipt of proof.” A true and correct copy of the email from Viking Advocates, LLC is attached hereto as Exhibit H.

24. Arnold & Porter has completed translation of the pleadings into Korean and is in the process of serving Defendants pursuant to the Hague Convention.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

EXECUTED at Los Angeles, California, this 28th day of April, 2023.

/s/ James S. Blackburn

James S. Blackburn (*pro hac vice*)

¹⁶ Available at <https://discord.com/channels/988365908009447485/988662112454836234/1090510064609140867>. A copy of the post is attached hereto as Exhibit K-3.